

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 MCT-01 IO-13 ACDA-12 TRSE-00 COME-00
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FM USMISSION USBERLIN
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AMEMBASSY BONN
INFO AMEMBASSY BERLIN
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AMEMBASSY MOSCOW
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USMISSION USNATO
AMCONSUL BREMEN
AMCONSUL DUSSELDORF
AMCONSUL FRANKFURT
AMCONSUL HAMBURG
AMCONSUL MUNICH
AMCONSUL STUTTGART

C O N F I D E N T I A L USBERLIN 1011

E O 11652: GDS
TAGS: PINT AKB GW
SUBJ: EXTENSION OF FRG ANTI-TERRORISM LAW TO BERLIN

REFS: (A) BONN 6975, (B) BONN 3031, (C) BONN 2732

SUMMARY: ALLIED KOMMANDATURA HAS ISSUED BK/L WHICH AUTHORIZES
EXTENSION TO BERLIN OF LATEST FRG ANTI-TERRORISM LAW SUBJECT TO

ALLIED RIGHTS AND RESPONSIBILITIES IN BERLIN. END SUMMARY.

1. IN ACCORDANCE WITH ESTABLISHED PROCEDURE, THE BERLIN HOUSE
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OF REPRESENTATIVES WILL ADOPT FOR BERLIN THE FRG ANTI-TERRORISM
LAW REPORTED REFTELS WHICH WAS ADOPTED BY THE FRG ON 14 APRIL.
THE BERLIN HOUSE PLANS TO DO SO TODAY. IN ORDER TO ENSURE ALLIED
RIGHTS AND RESPONSIBILITIES WITH RESPECT TO BERLIN, THE ALLIES
HAVE ISSUED A BK/L CONTAINING RESERVATIONS AND INSTRUCTIONS
WITH RESPECT TO APPLICATION OF THE LAW IN BERLIN. THE
SPECIFIC POINTS ARE AS FOLLOWS:

A. BECAUSE THE LAW GIVES THE FEDERAL PROSECUTOR INCREASED POWERS, THE SENAT IS REMINDED OF THE PROVISION OF BK/O 51(63) UNDER WHICH FEDERAL OFFICIALS EXERCISING FUNCTIONS IN BERLIN ARE SUBJECT TO BERLIN LAW AND TO THE POWERS AND JURISDICTION OF THE ALLIED AUTHORITIES;

B. ARTICLE 1(4) OF THE LAW GIVES THE POLICE BROAD AUTHORITY TO STOP AND SEARCH PERSONS. SUCH A PROVISION IS INCOMPATIBLE WITH THE STATUS OF MEMBERS OF THE ALLIED FORCES. HOWEVER, IT WAS DEEMED REASONABLE THAT THE POLICE IN THEIR EFFORTS TO STOP AND IDENTIFY SUSPECTED TERRORISTS SHOULD BE ABLE TO DETAIN A PERSON WHO CLAIMS TO BE A MEMBER OF THE ALLIED FORCES BUT WHO CANNOT GIVE PROOF OF HIS STATUS EITHER BECAUSE HE IS NOT IN UNIFORM OR DOES NOT HAVE IDENTIFY DOCUMENTS ON HIS PERSON. THE BK/L PERMITS SUCH DETENTION ONLY UNTIL THE STATUS OF SUCH PERSONS AS MEMBERS OF THE FORCES HAS BEEN VERIFIED; AND

C. UNDER ARTICLE 1(1) OF THE LAW THE POLICE MAY SEARCH EACH APARTMENT IN AN APARTMENT BUILDING WITHOUT GETTING A SEARCH WARRANT FOR EACH APARTMENT, IF THEY SUSPECT THAT A WANTED, PRESUMABLY TERRORIST, INDIVIDUAL IS HIDING SOMEWHERE IN THE BUILDING. FOR THE GERMAN POLICE TO SEARCH RESIDENCES OF MEMBERS OF THE FORCES WOULD BE AN UNACCEPTABLE EXERCISE OF GERMAN JURISDICTION. ACCORDINGLY, THE BK/L PROVIDES THAT SUCH SEARCHES MAY ONLY BE DONE BY THE APPROPRIATE MILITARY POLICE OR PUBLIC SAFETY ADVISER. COMMENT: IT REMAINS FOR EACH OF US, CONFIDENTIAL

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I.E., THE BRITISH, FRENCH AND US AUTHORITIES, TO WORK OUT AND TO ADVISE THE GERMAN POLICE OF THOSE CONDITIONS UNDER WHICH SEARCHES OF SUCH RESIDENCES BY ALLIED MILITARY POLICE OR PUBLIC SAFETY ADVISERS ACCOMPANIED BY GERMAN POLICE WILL BE PERMITTED IN HE DIFERENT SECTORS. USBER IS IN CONSULTATION WITH USCOB, IN PARTICULAR WITH THE PROVOST MARSHALL'S OFFICE AND THE STAFF JUDGE ADVOCATE'S OFFICE IN ORDER TO DETERMINE HOW THE PROCEDURE WOULD OPERATE IN THE US SECTOR, OR WITH RESPECT TO MEMBERS OF THE US FORCES WHO RESIDE IN THE BRITISH OR THE FRENCH SECTOR.

2. FOLLOWING IS THE TEXT OF THE BK/L WHICH WAS ISSUED, EFFECTIVE 27 APRIL 1978: BEGIN TEXT -- SUBJECT: LAW OF 14 APRIL 1978 AMENDING THE CODE OF CRIMINAL PROCEDURE
DEAR MR. GOVERNING MAYOR,

1. THE ALLIED KOMMANDATURA HAS NO OBJECTION TO THE ADOPTION IN BERLIN OF THE ABOVE-MENTIONED LAW. HOWEVER, SUCH ADOPTION SHALL NOT AFFECT ALLIED RIGHTS, RESPONSIBILITIES AND LEGISLATION, AND IN PARTICULAR THOSE RELATING TO THE STATUS AND SECURITY OF THE ALLIED FORCES AND THEIR MEMBERS.

2. ACCORDINGLY NO MEASURES UNDER ARTICLE 1(1) TO SEARCH APARTMENTS OR OTHER ROOMS SHALL BE TAKEN IN RESPECT OF RESIDENCES OF MEMBERS OF THE ALLIED FORCES. ANY SUCH SEARCH MAY ONLY BE DONE BY THE APPROPRIATE MILITARY POLICE OR PUBLIC SAFETY ADVISER.

3. WHEN MEASURES ARE TAKEN UNDER ARTICLE 1(4) TO STOP AND SEARCH PERSONS, ALLIED PERSONNEL MAY ONLY BE STOPPED IN ORDER TO VERIFY THEIR STATUS. THEY AND THEIR VEHICLES MAY NOT BE SEARCHED. IF A PERSON CLAIMS TO BE A MEMBER OF THE ALLIED FORCES BUT HIS STATUS IS NOT VERIFIED, THE GERMAN AUTHORITIES MAY DETAIN HIM AND NOTIFY THE APPROPRIATE MILITARY POLICE OR PUBLIC SAFETY ADVISER IMMEDIATE-
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LY IN ORDER TO CLARIFY HIS STATUS.

4. IN EXERCISING THE INCREASED POWERS GIVEN TO HIM BY THE LAW, THE FEDERAL PROSECUTOR WILL BE SUBJECT TO THE PROVISIONS OF BK/O (51)63. END TEXT.GEORGE

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